IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 290 OF 2006

Shri. Gireesh U.G. Menon,
Indian Inhabitant of Mumbai,
having address at
C/o. M/s. Crawford Baylay & Co.
State Bank of India Bldg.
16, Bank Street, Mumbai. ... Petitioner

Vs.

1. Mumbai Mazdoor Sabha,
a Trade Union registered under
the Trade Unions Act having
its office at Kenedy House,
4th Floor, Goregonkar Road,
Mumbai 400 007.

2. M/s. Crawford Bayley & Co.
a firm of Solicitors and
Advocates having their office
at State Bank of India Bldg.
16, Bank Street, Mumbai 23.

3. Shri. V.P. Rothe,
Member, Industrial Court,
Mumbai, having his office at
New Administrative Building,
Bandra, Mumbai. ... Respondents

Mr. R.S. Pai i/by J.K. Desai for Petitioner.

Mr. Arshad Shaikh i/by Mr.G. Yadav for R. No. 1.

Mr. Prem Ranga for R. No. 2.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED: SEPTEMBER 26, 2006

ORAL JUDGMENT (Per F.I. Rebello,J.):

. Rule. Heard forthwith.

. The Petitioner employed with M/s. Crawford Bayley & Co, had made an application to the Industrial Court to be impleaded as party in

Application (M.R.T.U.) No. 14 of 2003, which was taken out by Respondent No. 1, under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act (M.R.T.U. & P.U.L.P. Act) (hereinafter referred to as the Act). An affidavit was filed in support of the application. Along with the Petitioner, other employees also filed affidavits. In the affidavit it was pointed out that the Petitioner was a Member of the Mumbai Mazdoor Sabha and had resigned from the membership of Respondent No. 1 from 2.4.2004. They had intimated to Respondent No. 1 that they had joined another union namely Adarsh Kamgar Sabha. In the affidavit it has been set out as under :

> "I have informed the non-Applicant Union to revoke and cancel resolution dated 19th August, 2003 passed by the Applicant Union in which it was decided that the Applicant Union should apply for recognition for M/s. Crawford Bayley & Co. Bombay the Non-Applicant Company. I have also informed the Applicant Union that I am no more the member of the Applicant Union and have become the member of Adarsh Kamgar Sabha a Union registered under the Trade Union Act, 1926."

. It is then stated that if the recognition is granted to Respondent No. 1 it will prejudice and harm the interest of the employees as their interest would be adversely affected. The Petitioner along with other employees opposed recognition being granted to Respondent No. 1.

. Respondent No. 1 has raised several objections to the maintainability of the application. The applicant it is stated has no right to participate under Chapter III and IV of the M.R.T.U. & P.U.L.P. Act and for that purpose reliance was placed in the judgement of Fashion Production Mazdoor Sabha Vs. Smt. Smita Prabhakar Dalvi and Ors. 1985 II C.L.R. 314. The main Application for recognition has been filed by Respondent No. 1 in August, 2003 and the relevant period is from February to July, 2003. The Union which the Petitioner claims to have joined has came into existence only in April, 2004 and as such the applicant has no locus standi to become a party in the proceedings, as the Union is only about 5 months old. The workmen working in the company were their members during the relevant period and also are very much members at the time of filing the reply and as such the contentions of the various workmen were not correct.

2. The learned tribunal heard the parties and by an

order dated 17.2.2005 dismissed the application. The learned Industrial Court held that the application is not verified by any of the workman and has been signed by the Advocate. It also held that it was possible for the individual workmen to implead their present union as non applicant No. 2 in this case but that had not been done. The 64 workmen had switched over to the membership of another Union recently. The essential prerequisites for making an application for recognition, prescribed under the Act had not been completed by the new Union, whose membership has been accepted by the present workman. The court while considering the grant of recognition is required to examine whether the applicant Union has proved its majority of membership for the relevant period. During the verification of the membership of the applicant Union, individual employees can raise their grievance, if any, before the investigating officer. The tribunal also held that considering the scheme of the Act and the Rules, the workman had not fulfilled the criteria for being impleaded in the complaint and accordingly rejected the application. It is this order which is the subject matter of the present petition.

3. At the hearing of the Petition, on behalf of the Petitioner, their learned counsel submits, that the

Industrial Court has completely misread the provisions of the Act and the rules while rejecting the application. Section 12 of the Act itself, contemplates that the Industrial Court is duty bound to give notice to employees likely to be affected, Employers and the Unions in the undertaking before the grant of recognition to an applicant Union. Under Section 12, it was the bounden duty of the Industrial Court to consider the objections raised by the employees to the recognition sought for by the Respondent No. 1. The observation of the Industrial Court that individual employees can give their say before the Investigation Officer during the verification of the membership disclose an error of law apparent on the face of the record. It is the court under Section 12 which has to consider the objections and not the Investigating Officer. It was the duty of the court to consider whether the Union seeking recognition and which does not have even a single member at the time of considering an application, can act in the interest of the workers and therefore, the Industrial court should not have rejected the application for joinder. The Industrial Court it is submitted has overlooked the provisions of Section 11 and 12 of the Act under which, hearing to affected employees has to be given and as such the court was bound to allow the application and to implead the workers as party

respondents to the proceedings.

. On the other hand on behalf of the Respondent No. 1, their learned counsel submits that it is Respondent No. 1 who had applied for recognition. What the court in such circumstances must do is to examine whether the Union which has made an application for recognition has for the whole of the period of six calender months immediately preceding the calender month in which it so applies, membership of not less than 30% of the total number of employees employed in any undertaking. It is submitted that based on the material produced by the Petitioners themselves, admittedly, they had joined another union much after the application by Respondent No. 1. No member can individually be allowed to be represented in the proceedings. Only an Union can so apply and as the Union to which some of the employees subsequently joined, did not have the relevant membership for the concerned period, the application for joinder was rightly rejected.

4. The issue which we are called upon to answer is, whether on a notice being given under Regulation 23(ii) of the Industrial Court Regulation 1973, (which hereinafter shall be referred to as "Regulations") in form 8-A, can the employees employed in the establishment in respect of which

recognition is sought, apply to the Industrial court to be added as parties in the proceedings.

5. It is settled law and in our opinion, it will make no difference whether the application is made before a tribunal or a civil court. It is only those parties whose presence is required for disposing of the issues in controversy, who alone are necessary parties to the proceedings as also those parties may be added whose presence may be required to enable the Court or Tribunal to pass an effective decree. Therefore, the Industrial court would have to apply the test of joinder of parties in deciding whether the applicant is necessary and or a proper party which answer would depend upon whether their presence is required for adjudication of the dispute pending before it. To examine that issue, we may consider some of the relevant provisions of the M.R.T.U. & P.U.L.P. Act, 1971. Chapter III of the Act deals with the recognition of the Union. Section 10 sets out that the provisions of Chapter III shall apply to every undertaking wherein fifty or more employees are employed, or were employed on any day of the preceding twelve months. Under Section 11, any Union which has for the whole of the period of six calender months immediately preceding the calender month in which it so applies. membership of not less than 30% of the

total number of employees employed in any undertaking, apply for being recognised. Under Section 12 the Industrial Court on receipt of the application from the Union and on payment of prescribed fees, if it finds the application to be in order, has to cause notice tobe displayed on the notice board of the undertaking, declaring its intention to consider the said application on the dates specified in the notice and calling on the other union or unions having membership and employees likely to be affected, to show cause within the prescribed time as to why the recognition should not be granted. It is not necessary to refer to other provisions which require that the Industrial Court must come to the conclusion that the conditions required for registration under Section 11 are satisfied. For our discussion it may be necessary to refer to Section 12(5) which sets out that the Industrial Court shall not recognise any union, if it is satisfied that the application for its recognition is not made bona fide in the interest of the employees, but is made in the interest of the employer, to the prejudice of the interest of the employees.

. Under Section 14 it is open to the Industrial Court to entertain an application for recognition of another union on the ground that it has the largest

membership amongst employees employed in such undertaking, after a period of two years has elapsed from the date of registration of the recognised union. By the proviso it is set out that the Industrial Court cannot entertain any application for registration of the Union, unless a period of one year has elapsed since the date of disposal of the previous application of that union. The procedure then is set out.

. Regulations have been framed which are known as Industrial Court Regulations, 1975. We are concerned with Regulation 23 which reads as under :

> "23.(ii) A notice to be displayed on the Notice Board of the undertaking under Section 12 of the Act, shall be in Form 8-A."

. If we peruse Form 8-A, in the first part it provides for notice to the other unions having membership of employees to show cause as to why recognition should not be granted to the applicant union. The first part also speaks about the notice to the employers and employees likely to be affected by the proposal as mentioned in the application. In other words, notice is sent not only to other unions in the establishment but also to the employees and

employers likely to be affected by the proposal.

6. The Respondent No. 1 had made an application on 27.8.2003 claiming membership of a total of 72 employees between February, 2003 and July, 2003. There was a settlement entered into between Respondent No. 1 and the employer, Respondent No. 2. In terms of Clause 42 of the settlement, apart from some other payments, the subscription of Rs.480/- had to be paid for four years. The annual membership fee is Rs.120/-. By the settlement, the employer reiterated that it continues to recognise Respondent No. 1 as sole bargaining agent. This settlement was to be in force for three years from 1str April, 2000. Another settlement was arrived at on 31.3.2004, purely by way of interim arrangement and it was further agreed that if the new settlement was arrived at on the expiry of the settlement dated 15.1.2001, it will be effective from 1.4.2003.

. Sixty-two employees addressed a communication dated 5.4.2005 to the Investigating Officer, pointing out, that the Respondent No. 1 had no locus standi, as all the employees had resigned from the membership of Respondent No. 1 union from 2.4.2004 and had joined Adarsh Kamgar Sabha. Respondent No. 1 had been informed by memorandum dated 2.4.2004 in which it was also stated that the

staff had filed individual affidavits before the Industrial Court. It is also mentioned that a settlement had been entered into between Respondent No. 2 and Adarsh Kamgar Sabha of which the employees were member for the period of 1.4.2003 to 31.3.2006 and as such the Respondent No. 1 does not hold any membership and representative character since 1.4.2003. The attention of the I.O. was invited to Order dated 17.2.2005 of the Industrial Court where it was set out that if there is any dispute about membership for the relevant period, the individual person can make grievance before the I.O. The I.O. was requested to consider their representation. It will be clear therefore, from this that the intervener workman and 61 other employees had resigned on 2.4.2004 whereas the application by Respondent No. 1 was filed in August, 2003 and for the relevant period for Feb. to July, 2003. It is in this context that we shall have to examine the issue which is under consideration.

7. Admittedly 62 employees presently are members of Adarsh Kamgar Sabha. They were members of Respondent No. 1 for the relevant period at the time application was made for recognition. In these circumstances, can they apply to the Industrial Court hearing an application under Section 11 of the

MRTU & PULP Act, to be impleaded as respondents in the application. In our opinion, to answer that, we will have to consider the scheme for recognition under the provisions of the M.R.T.U. & P.U.L.P. Act.

> "12.Recognition of Union : (1) On receipt of an application from a union for recognition under section 11 and on payment of the prescribed fees, not exceeding rupees five the Industrial Court shall, if it finds the application on a preliminary scrutiny to be in order, cause notice to be displayed on the notice board of the undertaking, declaring its intention to consider the said application on the date specified in the notice, and calling upon the other union or unions, if any, having membership of employees in that undertaking and the employers and employees affected by the proposal to show cause, within a prescribed time, as to why recognition should not be granted to the applicant-union.
>
> (2) If, after considering the objections, if any, that may be received under sub section (1) from any other union (hereinafter referred to as "other union") or employers

> or employees, if any, and if after holding such enquiry in the matters as it deems fit, the Industrial Court comes to the conclusion that the conditions requisite for registration specified in section 11 are satisfied, and the applicant Union also complies with the conditions specified in section 19 of the Act, the Industrial Court shall, subject to the provisions of this section grant recognition to the applicant-union under this Act, and issue a certificate of such recognition in such form as maybe prescribed.
>
> (3) ....
>
> (4) .....
>
> (5) The Industrial Court shall not recognise any union, if it is satisfied that the application for its recognition is not made bona fide in the interest of the employees, but is made in the interest of the employer, to the prejudice of the interest of the employees."

. We have already made reference to Regulation 23 and to the notice in Form No. 8-A which has to be displayed on the notice Board of the undertaking under Regulation 23(2). Section 12(1) uses the expression to "show cause". The word "show cause"

in Law Lexicon has been described as under :

> "Show cause" Were the Court calls on a party to "show cause", that by necessary implication would allow the other side to answer (per Brett,L.J., Davis V.Spence, 1 C.P.D. 721)."

. The judgments cited at the bar may now be considered. In Kamgar Utkarsha Sabha Versus M/s. Benett Coleman & Co. Ltd. & Ors. 1985 (1) C.L.R. 118, decided on 6.11.1984, the issue under consideration was, as to what was the relevant date for considering requirement of 30% membership while considering application under Section 11 of the M.R.T.U. & P.U.L.P. Act. After considering the scheme of the Act and the Judgments cited, the learned Bench was pleased to observe that it would be with reference to the date on which the application is made and not the date on which the application is decided. It further held that only on the Industrial Court prima facie being satisfied about the merit of the application, that it causes a notice to be displayed on the board of the undertaking, declaring its intention to consider the application and inviting objections from other Union or unions if any, having membership of employees in

the undertaking as well as from the employer. This judgment really would not assist us in answering the issue.

. Reliance next was also placed on the judgment in Maharashtra General Kamgar Union Vs.Mazdoor Congress and Others, 1983 LAB I.C. 1034. This court observed, considering section 13 which is the power conferred to cancel recognition given to the recognised union, that the period of six months contemplated under Section 13 must be one which precedes the issuance of the show cause notice. The learned Bench therefore, noted the distinction between secret ballot and enquiry and observed, that secret ballot is a method of voting which is a process of election, while the enquiry contemplated by section 13 of the Act of 1971 is a fact finding process and as such the secret ballot cannot be used by a quasi judicial enquiry to record a finding of relevant facts as contemplated. In Fashion Production Mazdoor Sabha Vs. Smt. Smita Prabhakar Dalvi and others, 1985 II CLR 314, the issue was whether an individual employee or employees can initiate proceedings for cancellation of recognition of union under section 13 of the M.R.T.U. & P.U.L.P. Act. After considering various provisions the court held that the application contemplated under Section 13 can be, by an union and not by an

individual employee and that initiation of proceedings by individual employee under section 13 was not thought of by the Legislature. The learned Single Judge deciding the matter, however, made a distinction in the application for recognition by holding that giving a right to apply for recognition stands on a different footing than issuing a show cause notice and considering the objections, if any, raised by either the employer or employees.

. On behalf of the Petitioner, their learned counsel has drawn our attention to the judgment of this court in Dandekar Vs. Dandekars I.L.R. 6 Bom. 661. The learned Bench was considering the expression "show cause" under Section 525 and 526 of the Code of Civil Procedure, 1877. The court observed as under :

> "The term "to show cause" is a technical term, having a well understood meaning. It does not mean merely to allege cause, nor even to make out that there is room for argument, but both to allege cause and to prove it to the satisfaction of the Court. We think we may safely say that the term is used in this sense in every other part ;of he Code in which it occurs (e.g. in sections 479 and 485); and we do not see

> how we should be justified in putting a different construction upon it in sections 525 and 526."

8. As such what appears clear is that, when show cause notice is issued by the Industrial Court, calling on the other union or unions having membership of employees or undertaking and to the employees and employers likely to be affected by the proposal, they have a right to appear before the industrial Court and to show cause and not merely file objections before the Investigating Officer. The importance of the show cause notice is not only to ascertain as to which union or unions has majority but has to be viewed in the context of sub section (5) of section 12, which notes that the Industrial Court shall not recognize any union if it is satisfied that the application for its recognition is not made bona fide in the interest of the employees but is made in the interest of the employer, to the prejudice of the interest of the employees. Therefore, while granting recognition, the Industrial Court has to take into consideration, the bona fides of the application and whether such application made, is in the interest of the employees and or is made in the interest of the employer to the prejudice of the interest of the employees. This would necessarily require an

enquiry in which those to whom show cause notice is served and have filed their objections have to be heard. This can only be done if they are allowed to participate in the proceedings. Participation in the proceedings would be after they being joined as parties in the proceedings. They are not witnesses who are being summoned to give their evidence. Section 12 confers a right on the union tobe recognized, only after it satisfy the necessary tests including the requirement of Section 12(5) of the Act.

. Section 13 provides that recognition of the union can be cancelled. One of the grounds is that, it was recognized under a mistake, misrepresentation or fraud or that the membership of the union has, for a continuous period of six calender months, fallen below the minimum required under section 11 for its recognition. These grounds are post recognition. The Act and the rules by virtue of Section 11(2) contemplates that the application shall be disposed of by the Industrial Court as far as possible within three months from the date of receipt of the application, where a group of concerns in any industry which is notified to be one undertaking for which recognition applied for is situated in the same local area, and in any other case, within four months. The time limit for disposal has to be read

as directory, though expression used is "shall". It is not necessary for us in the course of this discussion to examine why it is directory and not mandatory. Yet another provision in the matter of recognition is Section 14, under which an Union applies to be recognised in place of the recognized union, on the ground that it has larger membership of the employees employed in such undertaking. Such application will be considered only if a period of two years has elapsed, since the date of registration of the recognized Union. The proviso further contemplates that such application may not be entertained unless a period of one year has elapsed since the date of disposal of the previous application of that union. A reading of Section 13 and 14 would therefore, show that power has been conferred on the Industrial Court to cancel registration and or to recognize another union in the establishment or undertaking.

9. What happens in a case where an Union which had a majority for the relevant period when the application was made in the course of the proceedings, ceases to enjoy the confidence of the majority. In such a case, can the Industrial Court while considering grant of recognition under Section 12(5) grant recognition by ignoring the subsequent events. Would these subsequent events have an

important bearing for consideration whether the application is bona fide and in the interest of the employees. No doubt the language used in the section says that the application must be made in the interest of employer to the prejudice of the interest of the employees. This would be a finding of fact which will have to be recorded taking into consideration various factors. What however, is important to note is that any union or employees who reply to the show cause will be in a position under Section 12(5) to place material as to why an application is not bona fide and in the interest of the employees but is in the interest of the employer to the prejudice of the interest of the employees.

. It must still be noted that admittedly the Petitioner and other 61 employees had paid the membership fees for a period of three years which included the relevant period in terms of the settlement which requires the management to deduct the union membership fees from the employees wages and or and or establishment and pay the same to the Union. This has been done in the instant case. This is permissible. The law on the subject may be adverted to. In Management of Karnataka State Road Transport Corporation Vs. KSRTC Staff & Workers' Federation and anr. 1999(1) 645 in the matter of check off facility. The Supreme Court was pleased

to observed as under :

> "Pay Roll Check off Facility, as noted earlier cannot be considered to be a benefit available to the workmen. At the most, it will be a facility to the Union to get an ensured method of securing membership fees from its members on regular basis."

. We have considered this judgment as our attention was invited to the judgment of a learned Division Bench of the Gujarat High Court in Gujarat Textile and General Labour Organization and Another Versus Commissioner of Labour and Others, 2006 I LLJ 86, where the Bench has taken a view in a case where there was a clause in the settlement, for deduction of moneys towards the subscription of membership. The learned Bench was of the view that in the settlement arrived at between the parties, if anything which is not an industrial dispute is settled between employer and representative Union or Union and its members, then such settlement would have no binding effect. In that case, it was held that the practice of deducting subscription towards membership fees would not be an industrial dispute. It may be mentioned that in the judgment of the Apex Court in the Management of K.S.R.T.C. (supra), the provisions for check off facility was based on

individual members giving authorisations to the Management to deduct subscriptions of the members of the Union from their wages. In other words, there can be check off facility for deduction of membership fees on the member agreeing to such practice. Payment of fees by employees of the Undertaking would entitle the Union to apply for recognition if it meets the tests of sections 11 and 12 of the M.R.T..U. & P.U.L.P. Act. That however, will not prevent an employee though for the relevant period, such employee may have paid the membership fees from showing cause as to why the Applicant Union cannot be recognised.

10. It would be clear from a reading of Sections 11, 12, 13 and 14 that the Legislature has provided a scheme whereby the Union having a majority of support amongst the workmen in the establishment/undertaking is only to be recognized. Section 12 requires that it is not merely support of the majority of workmen which must be not less than 30% of the employees employed, but it mandates that the Industrial court must be satisfied that application for registration is made bona fide in the interest of the employees and is not made in the interest of the employer, to the prejudice of the interest of the employees. There is therefore, a power in the Industrial Court even if on the date of

the application if the union satisfies the requirement of Section 11, in case of large scale erosion of support, not to grant recognition. Any Union having no support or its support falls drastically, then it would be construed on the facts of each case that there is reasonable ground to believe that it is bound to fall prey to interests other than the interest of the employees. This is the reason why Section 11 contemplates that the application must be disposed off within a time frame. Under Section 13, the Industrial Court is empowered to cancel the recognition after giving show cause notice for reasons set out therein including that the membership of the union for a continuous period of six calender months, has fallen below the minimum. This power is to be exercised post recognition. If therefore, a union has lost its membership during the pendency of the proceedings for a continuous period of six calender months, then cannot this legislative concept be also considered while considering Section 12(5). We are of the opinion that it can be so read considering the powers conferred on the Industrial Court. Similarly Section 14 provides for subsequent contingencies for cancellation of the certificate of a recognised union and registering another union. The object behind the legislation seems to be that only genuine unions capable of representing the

interest of the employees should be recognized and that the employees are not forced to accept a union to represent them in whom they have lost confidence.

11. We may now consider the impugned order. The impugned order proceeds on the footing that 64 employees who had filed affidavits, cannot be impleaded as parties on the basis that they had switched over from the Membership of another Union in the course of the proceedings. The learned Industrial Court further observed that essential prerequisites for making the application for recognition prescribed under the Act was not applied by the other Union whose membership is accepted by the present workman. In our opinion, that would be immaterial. Under Section 12 recognition is given not only because Union applying under section 11 has a majority but the Industrial Court must be satisfied considering Section 12(5) of the Act, that such application is bona fide and in the interest of workmen. In our opinion, therefore, the impugned order dated 7.2.2005 has to be quashed and set aside and the application made by Petitioner will have to be allowed. It will be open to the Petitioner to apply to sue in a representative capacity or if Respondent No. 1 consents, to be sued through the Union, which they have now joined or examine the other employees as witnesses to show, considering

Section 12(5) as to why Respondent No. 7 Union shall not be recognised. Even the Union which the employees have joined can apply to be joined if it meets with the requirements of provisions of the Act and the rules as explained in this judgment, though in the instant case, the employees joined the other union on April, 2004.

12. Considering the above, Rule made absolute in terms of Prayer Clause (a). The application is allowed. The applicant tobe added as respondent or the applicant be permitted to sue in a representative capacity, if the applicant follows the required procedure.

. In the circumstances of the case, there shall be no order as to costs.

(ANOOP V. MOHTA,J.) **(F.I.REBELLO, J.)**